

PLANNING DEPARTMENT
Department of Planning, Building and Code Enforcement
1 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Planning Department Item Number P.C. 6/09/04 Item 3.b.
File Number CP 03-077
Application Type Conditional Use Permit
Council District 2
Planning Area Edenvale
Assessor's Parcel Number(s) 706-01-047

PROJECT DESCRIPTION		Completed by: Jeff Roche
Location: Northeastly side of Realm Drive, approximately 200 feet northwesterly of Bernal Road (7019 Realm Drive)		
Gross Acreage: 1.51	Net Acreage: 1.51	Net Density: n/a
Existing Zoning: IP Industrial Park	Existing Use: Vacant Office	
Proposed Zoning: No Change	Proposed Use: Adult Daycare Center with incidental health care (for a maximum of 190 adults)	

GENERAL PLAN	Completed by: JR
Land Use/Transportation Diagram Designation Industrial Park with Mixed Industrial Overlay	Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING		Completed by: JR
North: Office and Industrial	IP Industrial Park	
East: Office	IP Industrial Park	
South: Office	IP Industrial Park	
West: Indoor Private Recreation	IP Industrial Park	

ENVIRONMENTAL STATUS	Completed by: JR
Environmental Impact Report found complete Negative Declaration circulated on Negative Declaration adopted on	<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete

LEGAL HISTORY	Completed by: JR
Exemption Title: Oak Grove No. 25	Date: 7/16/1968

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
Approval Approval with Conditions Denial Uphold Director's Decision	Date: _____	Approved by: _____ <input checked="" type="checkbox"/> Action <input type="checkbox"/> Recommendation

PROPERTY OWNER/APPLICANT	CONTACT PERSON	
J. Callo 124 Old Middlefield Way Mountain View, CA 94043	Fred Ziaripour / Kazuo Yamasaki F. Z. Consultants 46923 Warm Springs Boulevard, Suite 102 Fremont, CA 94539-7914	

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Jeff Roche

Department of Public Works

See attached memorandum, dated 12/18/03 and email dated 5/17/04.

Other Departments and Agencies

See attached information from the Building Division and memorandum from the Fire Department, dated 12/18/03.

GENERAL CORRESPONDENCE

See attached project information submitted by the facility operator.

See attached letter from the applicant's architect, dated 5/20/04, and letter from the Great Oaks Water Company, dated 12/19/03.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The property owner, A.J. Callo, has proposed to lease a vacant portion of an existing office building to Silicon Valley Adult Health and Daycare Center (SVAH&DC) for an adult daycare center with incidental health care for a maximum of 190 adults. Daycare centers are allowed in the IP Industrial Park Zoning Districts on sites with the General Plan *Mixed Industrial Overlay*, subject to the approval of a Conditional Use Permit (CUP). This CUP also functions as a Site Development Permit for minor building and site improvements.

The subject site is developed with an office building. Surrounding land uses include office and industrial uses to the north, office uses to the east and south, and an indoor private recreation facility to the west.

PROJECT DESCRIPTION

The daycare operator's stated intent is to provide a place for senior citizens to enjoy association and interests with fellow senior citizens in a pleasant and safe atmosphere. Many of the participating seniors will be physically weak, and/or have disabilities or functional impairments. The facility is proposed to operate Monday through Friday from approximately 8:00 a.m. to 4:00 p.m. and will offer meals (breakfast and lunch), physical therapy, social services, occupational and speech therapy, chiropractic care, and recreation (including board and card games, exercise, arts and crafts, and other social activities). Twenty staff members will operate the facility, including a program director, social worker and a nurse. Bus transportation will be provided to and from the site for all participating seniors. Food will be catered. No food will be cooked on the site.

The daycare center will occupy approximately 13,258 square feet of the existing 22,760 square-foot office building. The remainder of the building will continue to be used for office purposes. Minor modifications proposed to the existing building include replacing roll-up doors with pedestrian doors

and the addition of a small outdoor smoking area for clients at the rear of the building. Two locations for on-site drop-off of clients are proposed; one at the southerly corner of the site, and the other at the rear of the building. The applicant has proposed to upgrade existing chain link trash enclosure to include masonry walls and a solid metal gate.

ENVIRONMENTAL REVIEW

The Environmental Quality Act, Section 15332 In-Fill Development Projects, indicates that projects may be found *exempt* which meet specific criteria. The proposed adult daycare facility conforms to these infill development exemption criteria, in that it is consistent with the applicable general plan policies and zoning designation and regulations; is entirely within the City limits and is on a site of less than 5 acres is substantially surrounded by urban uses; would not result in any significant environmental effects; and is adequately served by all required utilities and public services, consistent with the exemption requirements. Based on this analysis, the Director of Planning has determined that this project is exempt from further environmental review under the provisions of the California Environmental Quality Act.

GENERAL PLAN CONFORMANCE

The proposed adult daycare facility is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of *Industrial Park with Mixed Industrial Overlay*. The General Plan states that areas designated with the *Mixed Industrial Overlay* may be appropriate for a mixture of primarily industrial with compatible commercial or public/quasi-public uses. The Plan also specifies that new uses that include sensitive receptors should be considered within an Overlay Area only when they are compatible with and will not inhibit industrial uses. Based on the fact that the uses surrounding the proposed daycare center are primarily office and commercial, staff concludes that the proposed daycare use is compatible with surrounding uses and would not inhibit the operation of industrial businesses in the area.

PUBLIC OUTREACH

A notice of the Planning Commission public hearing was mailed to all owners and tenants of property within a 500-foot radius of the project site. No public comment has been received regarding this proposal. Staff has been available to discuss the project with members of the public.

ANALYSIS

The key issues analyzed for the proposed project are land use compatibility, California licensing requirements and Building Code requirements.

Land Use Compatibility

Staff believes that the proposed use is compatible with the characteristics of the surrounding neighborhood and site. Land uses in the area surrounding the site are predominately commercial uses (private indoor recreation, bank/financial, or office) that are compatible with the proposed daycare facility. The introduction of a sensitive receptor use into this largely commercial/office setting is not expected to negatively impact the operation of industrial businesses. The site has convenient access to Bernal Road and Santa Teresa Boulevard and the residential neighborhoods that lie to the west and south of the site.

The day care use is compatible with the office use located in the balance of the existing building. The use of hazardous materials is neither existing nor proposed on this site. Only minor changes are proposed to the exterior of the building, which will continue to look like an office building. With the exception of a small outdoor smoking patio, the use will be entirely contained inside the building. A parking analysis prepared for the project indicates parking is adequate to accommodate both existing and proposed uses on the property in conformance with the Zoning Code. Traffic associated with the daycare use is not expected to be significantly greater than that associated with office use in that the applicant is proposing to provide bus service for all participants of the daycare program.

For all of these reasons, staff has concluded that the proposed project will be compatible with existing uses on the site and within the surrounding neighborhood.

California Licensing Requirements

Adult daycare facilities are subject to the licensing requirements of the State of California, Department of Aging. A license application for this proposed facility is currently pending. The daycare facility operator originally proposed to accommodate a maximum of 225 adults (including staff members) at the site. As noted in the attached correspondence from the State of California, Department of Aging, that number was reduced in order to meet the State standard of 60 square feet of multi-purpose program space for each participant. The State does not require the provision of outdoor recreation facilities. The applicant has indicated that such space is not proposed for this project due to the difficulty of supervising adults in an outdoor setting. The current plans include up to 190 adults, with approximately 20 staff members. Staff has included a condition in the Draft Permit requiring the facility to conform to all applicable State requirements.

Building Code Requirements

The Building Division has indicated that extensive building upgrades are needed to bring the existing tenant space into conformance with Building Code requirements for the proposed use. The majority of improvements associated with converting the building from an office use to a daycare center consist of interior modifications. The project developer is currently working with both the City of San José Building Division and Fire Department to ensure that the proposal conforms to all applicable Building Code requirements before the use is implemented.

Conclusion

Based on the above analysis, staff concludes that the proposed adult daycare facility is compatible with uses on the site and in the surrounding neighborhood and that it will conform to all City Building Code and State licensing requirements.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The project site is located on the northeasterly side of Realm Drive, approximately 200 feet northwesterly of Bernal Road (7019 Realm Drive). This Permit would allow a daycare center for up to 190 adults in a portion of an existing office building.
2. The site has a designation of Industrial Park with a Mixed Industrial Overlay on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The project site is located in the IP Industrial Park Zoning District.
4. Under the provisions of Section 15332 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
5. The subject site is surrounded by office and industrial uses to the north, office uses to the east and south, and an indoor, private recreation and bank use to the west. The existing uses in the area are primarily commercial, office or non-industrial in nature.
6. The Zoning Ordinance requires a Conditional Use Permit for a daycare center in the IP Industrial Park Zoning District, with a Mixed Industrial Overlay on the General Plan.
7. The project proposes to allow a portion of an existing office building to be used as a daycare center with incidental health care for up to 190 adults. As conditioned, the daycare center will be restricted to a maximum of 190 adults.
8. The proposed use is totally within the existing building, with the exception of a small, outdoor smoking area. The project site is located within approximately 200 feet of Bernal Road, a Major Collector on the City's General Plan, and large, residential neighborhoods to the south (along Bernal Road) and the west (along Santa Teresa Boulevard). No hazardous materials are used in the building and only minor exterior changes are proposed to both the building and site.
9. The project developer has proposed to provide bus transportation to and from the facility for all adult participants served by the project. The proposed project includes both an existing and new on-site adult drop-off area. The remainder of the existing building will continue to be used for office uses consistent with the Zoning on the subject site.
10. A total of 78 parking spaces will exist on the site. A parking analysis was prepared for the project and is shown on the Site Plan for the project. That analysis shows that there is sufficient parking to serve both the existing and proposed uses.
11. As conditioned, the project developer/facility operator will be required to obtain and fully comply with all applicable local and State Permits.
12. Minor modifications to the exterior of the building (including doors and windows) and the site (including fencing, gates, a new, replacement trash enclosure, and landscaping) will occur as part of this project.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The adult daycare use is compatible with surrounding uses.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit and Liquor License Exception Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions"

form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved Site Development plans entitled, "Silicon Valley Adult Health and Daycare Center-7019 Realm Drive" dated, April 20, 2004, on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
3. **Number of Adults/Operation of Facility.** This facility shall be limited to the maximum number of adults allowed by the State of California, Department of Aging, not to exceed 190 adults. Changes to the operation of the facility as an adult daycare center from those described in the project plans shall be subject to additional permitting, to the satisfaction of the Director of Planning.
4. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
5. **Noise.** The sound level generated on this site shall not exceed 60 dba DNL at any property line adjacent to a property used for commercial purposes and shall not exceed 70 dba DNL at any adjacent property line of property used for industrial purposes.
6. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
7. **Bus/Van Service.** The project developer/facility operator shall provide bus or van service to and from the site for all adults served by the daycare facility

8. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
9. **Smoking Area.** The outdoor smoking area shall be removed upon the termination of the adult daycare use.
10. **Permits from other Agencies.** Prior to the use of the site for adult daycare purposes, the project developer shall obtain all necessary licenses/permits from applicable local and State agencies.
11. **Landscaping.** Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
12. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
13. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
14. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief. All existing and new fire hydrants shall be at least 10 feet from all driveways.
15. **Fire Flow.** Required fire flow for the site is 4,000 g.p.m. or as approved in writing by the Fire Chief.
16. **Fire Extinguisher System.** Building(s) shall be provided with an automatic fire extinguisher system. Systems serving more than 100 heads shall be supervised by a remote alarm system to the satisfaction of the Fire Chief.
17. **Visible Street Numbers.** Street numbers shall be visible day and night from the nearest street, either by means of illumination or by use of reflective materials.
18. **Lock Box.** The project developer shall install a lock box, to the satisfaction of the City of San José, Building Official and Fire Chief.
19. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
20. **Outside Storage.** No outside storage is permitted except in areas designated on the approved

Conditional Use Permit plan set.

21. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-4089) to the satisfaction of the Director of Public Works:

- a. *Public Works Clearance for Building Permits.* Prior to the issuance of Building Permits, the project developer will be required to satisfy all Public Works conditions .
- b. *Sewage Fees:* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

22. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This permit file number, CP 03-077, shall be printed on all construction plans submitted to the Building Division.
- b. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms to all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
- c: Raznik Zargarian, 17765 Elaine Court, Morgan Hill, CA 95037
Barbara Sapata-Hill, Program Analyst, Administration Team, Adult Day Health Care
Branch, State of California, Department of Aging, 1600 K Street, Sacramento, CA 95814